IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 3 of 2006
With
CIVIL APPLICATION No. 56 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGUBHAI DHANABHAI BHARVAD - Appellant(s)

Versus

RAMESHBHAI KESHAVLAL PATEL & 2 - Defendant(s)

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Appearance :
MR DR BHATT for Appellant(s) : 1,MR AS SAIYED for Appellant(s) : 1,
None for Defendant(s) : 1 - 3.
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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 17/01/2006

ORAL JUDGMENT

This Appeal from Order arises out of an order passed by learned Civil Judge (S.D.), Ahmedabad (Rural), below application Exh.5 in Special Civil Suit No.10 of 2005, on 15/12/2005, rejecting the appellant's said application

for injunction.

2. The appellant, who is the plaintiff in the said suit, has filed the suit for declaration and injunction. The case of the plaintiff is that the defendants have, in collusion with each other, entered into a transaction of sale whereby, the appellant's right is put to jeopardy. The plaintiff claims right on basis of an agreement to sell and power of attorney.

3. The defendants denied the case of the plaintiff and it was asserted that the Banakhat was executed in the year 1997 and sale-deed was executed in the year 2004 by registered documents. It is further the case of the defendants that the documents relied upon by the plaintiff in his favour are not genuine.

4. The trial Court has come to a conclusion that the plaintiff has no prima-facie case. This conclusion is arrived at after taking into consideration various aspects viz. that the documents relied upon by the plaintiff are un-registered documents, whereas the defendants' case is backed by registered documents. The Court also found that defendant-respondent No.1

normally puts his signature, whereas documents purported to have been executed by him in favour of the plaintiff, do not carry his signature but, they carry only thumb impression. This was found to be a suspicious circumstance in the claim of the plaintiff and the trial Court, therefore, refused to grant interim-relief, by rejecting the application at Exh.5. This Appeal from Order is preferred to challenge that order.

5. Learned Advocate, Mr.Bhatt, has at length argued the matter and has taken this Court through the documents in question. His bone of contention is that only because the document, upon which the plaintiff relies, carried thumb impression, it could not have been held to be suspicious or doubtful and, therefore, injunction ought to have been granted.

6. Having regard to the submissions made by learned Advocate for the appellant and facts of the case as emerging from the documents produced before this Court by the appellant, it has to be observed that the view taken by the trial Court, while rejecting the plaintiff's case, is not an impossible one or legally

perverse. Undisputedly, what emerges is that the plaintiff places reliance on un-registered document, purported to have been executed by respondent No.1 by putting his thumb impression, whereas the defendants have produced registered documents, which are executed by defendant No.1 by putting his signature and this Court finds no reason to take a different view of the matter than the view taken by the trial Court.

7. Apart from the above aspect, the plaintiff is asserting a right on basis of an agreement to sell, whereas on the day on which the suit is filed, property has already been sold by defendant No.1 by a registered sale-deed to defendant No.3. This sale-deed was executed on basis of an agreement to sell entered into between this very party in they year 1997 and as such, there is no question of granting interim-relief against the defendants. In these set of circumstances, the claim of the plaintiff, if proved to be correct, will entail ultimate legal consequence. But, at this stage, the interim-relief could not have been granted by the trial Court and has, therefore, rightly been rejected. This Court, finds no substance in the Appeal. The Appeal must fail and stands dismissed.

8. In view of the dismissal of Appeal from Order, Civil Application No.56 of 2006 would not survive and is disposed of accordingly.

(A.L.DAVE, J.)

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